THE HON'BLE MR JUSTICE B.PRAKASH RAO

And

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.8619 of 1996

20th September 2006

Between:

Nuclear Fuel Complex, rep.by Chief executive, ECIL PO,
Hyderabad – 500 062.

…PETITIONER

AND

1. D.Hanumantha Rao, S/o.Late Dr.D.Raghavendra Rao, C-775 NGO's Colony, Vanasthalipuram, Hyderabad – 500 070.

And one other.

…RESPONDENTS

THE HON'BLE MR JUSTICE B.PRAKASH RAO

And

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.8619 of 1996

ORDER: (Per the Hon'ble Mr Justice Ramesh Ranganathan)

This Writ Petition is filed, aggrieved by the award of the Industrial Tribunal (Central), Hyderabad ('the Tribunal' for brevity) in I.D.No.8 of 1989 dated 12.08.1994 wherein the Tribunal recorded a finding that the first respondent-workman had continuously worked for more than 240 days within a period of 12 months immediately prior to the date of termination of his service, which amounts to retrenchment under Section 2 (oo) of the Industrial Disputes Act, 1947 ('the Act' for brevity), and held that retrenchment of the workman, without complying with the mandatory provision under Section 25-F of the Act, entitled him to be reinstated into service with full back wages and continuity of service. The petitioner herein was directed to reinstate the workman with full back wages and all other attendant benefits.

Sri M.Ganga Rao, learned Standing Counsel appearing on behalf of the petitioner would submit that the respondent was engaged as a casual worker and since he was appointed for a specific period,

he comes under the exceptions specified in Section 2 (oo) (bb) of the Act. Learned counsel would submit that the Tribunal had erred in awarding full back wages since various relevant factors, including delay on the part of the respondent-workman in approaching the Tribunal, the nature of employment of the workman concerned etc., had not been taken into consideration before awarding full back wages. Clause (bb) of Section 2 (oo) of the Act excludes from the ambit of retrenchment, termination of the service of workman as a result of non-renewal of the contract of the employment between the employer and the workman concerned on its expiry or in cases where the contract itself has been terminated under a stipulation in that behalf contained in the contract. There is no evidence on record to indicate that the termination of the service of the respondent-workman was as a result of non-renewal of the contract on its expiry or was in terms of a stipulation contained in the contract. It is not even the case of the petitioner herein that a written agreement was entered into between the petitioner and the workman and the action taken to terminate the services of the respondent-workman was in accordance with such conditions.

While the learned counsel for the petitioner would seek to contend that the respondent-workman had not worked for 240 days within the period of twelve months prior to his termination, it must be remembered that this Court, in certiorari proceedings under Article 226 of the Constitution of India, would not interfere with the findings on fact recorded by a Tribunal, except where it is perverse or is based on no evidence. Since the Tribunal has recorded a categorical finding that the respondent-workman had put in more than 240 days service in the 12 month period prior to his termination, such a finding of fact does not call for interference under Article 226 of the Constitution of India.

While there is some force in the submission of the learned counsel for the petitioner that the Tribunal ought to have taken several other factors, while determining the quantum of back wages to be paid to the respondent-workman, we are saved the trouble of examining this contention in view of the fair concession of Sri G.Vidyasagar, learned counsel for the respondent-workman, that the award of the Labour Court directing payment of full back wages be modified to payment of 50% back wages. While reinstatement of the respondent-workman, as awarded by the Tribunal, is upheld, the award insofar as it has granted

full back wages is modified to that of 50% back wages.

The Writ Petition is disposed of accordingly. However, in the circumstances, without costs.

_____

(B.PRAKASH RAO, J)

_____

(RAMESH RANGANATHAN, J)

20th September 2006
RRB